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LAWRENCE SHAPIRO,
Plaintiff,
v.
ERIC LUNDAHL, et al.,
Defendants.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. [16-cv-06444-MEJ](#)

ORDER RE: MOTION TO DISMISS

Re: Dkt. No. 6

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INTRODUCTION

14 Pending before the Court is Defendant Eric Lundahl's Motion to Dismiss pursuant to
15 Federal Rule of Civil Procedure ("Rule") 12(b)(6).¹ Plaintiff Lawrence Shapiro filed an
16 Opposition (Dkt. No. 12) and Defendant filed a Reply (Dkt. No. 16). The Court finds this matter
17 suitable for disposition without oral argument and **VACATES** the March 23, 2017 hearing. See
18 Fed. R. Civ. P. 78(b); Civ. L.R. 7-1(b). Having considered the parties' positions, the relevant legal
19 authority, and the record in this case, the Court **GRANTS** Lundahl's Motion for the following
20 reasons.

21
BACKGROUND²

22 On November 5, 2014, Shapiro and Lundahl left La Paz, Mexico in a private, non-
23 commercial Cessna model 182K aircraft (the "182 Cessna"). Compl. ¶¶ 1-2, 19, Dkt. No. 1.
24 Although Shapiro "has been a pilot licensed to act as a Pilot in Command ('PIC') with passengers

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26 ¹ Lundahl also moved to dismiss pursuant to Rule 12(b)(4) and 12(b)(5), but appears to have
27 abandoned those arguments after Shapiro attached proofs of service to his Opposition. The Court
only addresses Lundahl's Rule 12(b)(6) arguments.

28 ² On this Motion to Dismiss, the Court accepts as true the well-pleaded factual allegations of the
Complaint. See *Vasquez v. L.A. Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007).

1 for most of his life[,]” he alleges that on November 5, 2014, he was a passenger, and that Lundahl
2 acted as PIC of the plane. *Id.* ¶¶ 2-3, 7. Lundahl made an unplanned stop at San Felipe
3 International Airport in Mexico to refuel the plane. *Id.* ¶¶ 1, 22. Lundahl encountered turbulence,
4 “found that he was unable to fly the airplane and abdicated control of the airplane to Plaintiff with
5 approximately thirty seconds remaining to land.” *Id.* ¶ 23. Shapiro was unable to correct the
6 landing, the plane crashed, and Shapiro was severely injured. *Id.* ¶¶ 24-25.

7 On November 4, 2016, Shapiro filed the instant Complaint in this Court. He alleges three
8 claims for violation of Federal Aviation Regulations 91.103, 91.151, and 91.13. *See Compl.* He
9 names as defendants Lundahl, as well as a number of entities related to Baja Pirates.³ Shapiro
10 alleges Lundahl is the owner or one of the owners of Baja Pirates, together with the owner of the
11 airplane, and that the Cessna 182 was used in connection with Baja Pirates’ business activities on
12 November 5, 2014. *See id.* ¶¶ 8-10. Lundahl moves to dismiss the Complaint on the ground it
13 fails to state a claim upon which relief can be granted.

14 **LEGAL STANDARD**

15 A court may dismiss a complaint under Rule 12(b)(6) when it does not contain enough
16 facts to state a claim to relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S.
17 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that
18 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
19 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility standard is not akin to a
20 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted
21 unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 557). “While a complaint attacked by a Rule
22 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to
23 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and
24 a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be
25 enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (internal
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27 ³ Baja Pirates of California, a Corporation; Baja Pirates of Mexico, a Mexican Corporation; Baja
28 Pirates of California, an organization of unknown form; and Baja Pirates of Mexico, an
organization of unknown form.

1 citations and parentheticals omitted).

2 In considering a motion to dismiss, a court must accept all of the plaintiff's allegations as
3 true and construe them in the light most favorable to the plaintiff. *Id.* at 550; *Erickson v. Pardus*,
4 551 U.S. 89, 93-94 (2007); *Vasquez*, 487 F.3d at 1249. In addition, courts may consider
5 documents attached to the complaint. *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484
6 (9th Cir. 1995) (citation omitted).

7 If a Rule 12(b)(6) motion is granted, the "court should grant leave to amend even if no
8 request to amend the pleading was made, unless it determines that the pleading could not possibly
9 be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en
10 banc) (internal quotations and citations omitted). However, the Court may deny leave to amend
11 for a number of reasons, including "undue delay, bad faith or dilatory motive on the part of the
12 movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice
13 to the opposing party by virtue of allowance of the amendment, [and] futility of amendment."
14 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Foman v.*
15 *Davis*, 371 U.S. 178, 182 (1962)).

16 DISCUSSION

17 Each of Shapiro's claims is based on Lundahl's alleged violation of the Federal Aviation
18 Act ("FAA"), 49 U.S.C. § 40103, and its implementing regulations. *See Compl.* Shapiro
19 contends federal jurisdiction exists because "[t]his action arises under 28 U.S.C. [§] 1331, 49
20 U.S.C. [§] 40103, 28 U.S.C. [§] 1331(1) and [the FAA's] implementing regulations." *Id.* ¶¶ 4-5.

21 The FAA "creates an extensive administrative enforcement scheme" but the Ninth Circuit
22 has concluded, repeatedly and without equivocation, that it does not create a private right of
23 action. *See In re Mexico City Aircrash of Oct. 31, 1979*, 708 F.2d 400, 406-08 (9th Cir. 1983)
24 (finding no intent to create private right of action in the FAA's language or legislative history);
25 *G.S. Rasmussen & Assocs., Inc. v. Kalitta Flying Servs., Inc.*, 958 F.2d 896, 901-02 (9th Cir. 1992)
26 ("[W]e have previously held that there is no implied private right of action under the Federal
27 Aviation Act. We reach the same conclusion here, particularly where plaintiff's claim is grounded
28 in the regulations rather than the statute itself.") (citing *Montgomery v. Am. Airlines, Inc.*, 637 F.2d

1 607, 609-10 (9th Cir. 1980)); *Martin ex rel. Heckman v. Midwest Exp. Holdings, Inc.*, 555 F.3d
2 806, 808 (9th Cir. 2009) (“As the FAA doesn’t create a federal cause of action for personal injury
3 suits,” the requirement to maintain liability insurance “can only contemplate tort suits brought
4 under state law.”); *see also Schneider v. Amador Cty.*, 2011 WL 3876015, at *3 (E.D. Cal. Sept. 1,
5 2011) (“[P]laintiff cannot proceed with a private right of action under the” FAA).

6 Shapiro does not deny that the FAA does not provide a private right of action; instead, he
7 argues the Court may exercise jurisdiction because the case arises under the “Convention on
8 International Civil Aviation, a treaty of the United States”; the regulations implementing the FAA
9 preempt state law; and because the case arises in admiralty. *See Opp’n* at 5-8. While Shapiro may
10 be able to invoke federal jurisdiction on these grounds based on as-yet-unpled allegations and
11 theories of liability, the claims in the Complaint assert a right of action based entirely on FAA
12 regulations. Because the Ninth Circuit has held the FAA regulations do not create a private right
13 of action, Shapiro’s claims are not cognizable and the Complaint fails to state a claim upon which
14 relief can be granted. The Court accordingly grants Lundahl’s motion to dismiss.

15 CONCLUSION

16 For the foregoing reasons, the Court **GRANTS** Lundahl’s Motion to Dismiss the FAA-
17 based claims **WITH PREJUDICE**. Because it is not clear from the allegations of the Complaint
18 that Shapiro would be unable to state a claim on a different ground, the Court grants Shapiro leave
19 to amend the Complaint to state a claim based on something other than a violation of the FAA or
20 its implementing regulations. Any amended complaint shall be filed no later than March 28, 2017.
21 Failure to amend the Complaint by this deadline will result in dismissal of the action without
22 prejudice.

23 IT IS SO ORDERED.

24 Dated: March 7, 2017

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26 MARIA-ELENA JAMES
27 United States Magistrate Judge
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